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 TEL: (818)238-5702/FAX: (818) 238-5724  
 Attorney for Defendants CITY OF BURBANK,  
 BURBANK POLICE DEPARTMENT,  
 BURBANK POLICE OFFICERS ADAM  
 BAUMGARTEN AND MICHAEL EDWARDS

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

PRESTON SMITH, an individual;

Plaintiff,

v.

CITY OF BURBANK, BURBANK  
 POLICE DEPARTMENT, BURBANK  
 POLICE DEPARTMENT OFFICER  
 GUNN; BURBANK POLICE  
 DEPARTMENT OFFICER  
 BAUMGARTEN; BURBANK  
 POLICE DEPARTMENT OFFICER  
 EDWARDS; AND DOES 1  
 THROUGH 100, INCLUSIVE

Defendant.

Case No.

CV10-8840 VBF (AER)

NOTICE OF NOTICE TO  
 PLAINTIFF AND STATE COURT  
 OF REMOVAL

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendants City of Burbank, Burbank Police  
3 Department, and Officers Baumgarten and Edwards, hereby file the Notice to  
4 Plaintiff and State Court of Removal of Action. Attached hereto is a copy of the  
5 conformed copy of the Notice to Plaintiff and State Court of Removal of Action.

6 DATED: November 17, 2010

7 Respectfully submitted,

8 DENNIS A. BARLOW

9 City Attorney

10 By: 

11 CAROL A. HUMISTON

12 Sr. Assistant City Attorney

13 Attorney for Defendants CITY OF

14 BURBANK BURBANK POLICE

15 DEPARTMENT, BURBANK

16 POLICE OFFICERS ADAM

17 BAUMGARTEN AND MICHAEL

18 EDWARDS

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Exhibit A

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

NOV 17 2010

John A. Clarke, Executive Officer/Clerk  
By *[Signature]* Deputy  
**DAWN ALEXANDER**

1 DENNIS A. BARLOW, CITY ATTORNEY  
State Bar No. 63849  
2 CAROL A. HUMISTON, SR. ASST. CITY ATTY.  
State Bar No. 115592  
3 275 East Olive Avenue  
4 P. O. Box 6459  
Burbank, CA 91510  
5 TEL: (818) 238-5707  
FAX: (818) 238-5724  
6 Attorney for Defendants CITY OF BURBANK,  
7 BURBANK POLICE DEPARTMENT,  
BURBANK POLICE OFFICERS ADAM  
8 BAUMGARTEN AND MICHAEL EDWARDS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

12 PRESTON SMITH, an individual;	) Case No.: BC446016
13	)
14 Plaintiff,	) NOTICE TO PLAINTIFF AND STATE
15	) COURT OF REMOVAL OF ACTION
16 v.	)
17 CITY OF BURBANK, BURBANK POLICE	)
18 DEPARTMENT, BURBANK POLICE	)
19 DEPARTMENT OFFICER GUNN;	)
20 BURBANK POLICE DEPARTMENT	)
21 OFFICER BAUMGARTEN; BURBANK	)
22 POLICE DEPARTMENT OFFICER	)
EDWARDS; AND DOES 1 THROUGH 100,	)
INCLUSIVE	)
23	)
24 Defendant.	)
25	)
26	)
27	)
28	)

TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO PLAINTIFF AND HIS  
ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendants City of Burbank, Burbank Police Department,  
and Officers Baumgarten and Edwards, filed its Notice of Removal of this action from the  
Superior Court of the State of California in and for the County of Los Angeles, to the United



1 States District Court for the Central District of California, 312 North Spring Street, Los Angeles,  
2 California 90012.

3 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. § 1446, the filing of the  
4 Notice of Removal in the United States District Court, together with the filing of a copy of the  
5 Notice of Removal with this Court, affect removal of this action and the above-captioned Court  
6 may proceed no further unless or until the case is remanded. A copy of the Notice of Removal is  
7 attached as "Exhibit A" and is served and filed herewith.

8 DATED: November 17, 2010

9 Respectfully submitted,

10 DENNIS A. BARLOW  
11 City Attorney

12 By: 

13 CAROL A. HUMISTON  
14 Sr. Assistant City Attorney  
15 Attorney for Defendant CITY OF  
16 BURBANK BURBANK POLICE  
17 DEPARTMENT, BURBANK  
18 POLICE OFFICERS ADAM  
19 BAUMGARTEN AND MICHAEL  
20 EDWARDS  
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7 275 E. Olive Avenue

8 Burbank, CA 91502

9 TEL: (818)238-5702/FAX: (818) 238-5724

10 Attorney for Defendants CITY OF BURBANK,

11 BURBANK POLICE DEPARTMENT,

12 BURBANK POLICE OFFICERS ADAM

13 BAUMGARTEN AND MICHAEL EDWARDS

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 PRESTON SMITH, an individual;

17 Plaintiff,

18 v.

19 CITY OF BURBANK, BURBANK  
20 POLICE DEPARTMENT, BURBANK  
21 POLICE DEPARTMENT OFFICER  
22 GUNN; BURBANK POLICE  
23 DEPARTMENT OFFICER  
24 BAUMGARTEN; BURBANK  
25 POLICE DEPARTMENT OFFICER  
26 EDWARDS; AND DOES 1  
27 THROUGH 100, INCLUSIVE

28 Defendant.

) Case No.

) **NOTICE OF REMOVAL**

**TO THE CLERK OF THE ABOVE ENTITLED COURT:**

**PLEASE TAKE NOTICE** that Defendants City of Burbank, Burbank Police Department, and Officers Baumgarten and Edwards respectfully submit this Notice of Removal of this action from the Superior Court of the State of California in and for the County of Los Angeles, Central District, in which court the action is pending, to the United States District Court for the Central District of California. In support of this Notice of Removal, the defendants state the following:

1. On or about September 22, 2010, an action was commenced against the City of Burbank, Burbank Police Department, Officers Baumgarten and Edwards in the Superior Court of the State of California in and for the County of Los Angeles, entitled *Preston Smith v. City of Burbank et al*, Case. No. BC446016. On October 18, 2010 the City of Burbank and Burbank Police Department were served with the Complaint. On October 21, 2010 Officers Neil Gunn, Jr., Adam Baumgarten and Micheal Edwards were served with the Complaint.

2. In the Complaint, plaintiff Preston Smith alleges a Civil Rights Violation, 42 USC § 1983, among other claims.

3. This action is a civil proceeding over which this Court has federal question jurisdiction, pursuant to 28 USC Section 1441 (b). Both the title of the Third Amended Complaint and paragraphs 8 and 11 of the Third Amended Complaint purport to allege a cause of action under 42 USC § 1983.

4. On October 18, 2010, the Defendants first obtained notice of this federal action when it was served with a copy of the Complaint. Attached hereto and incorporated herein by reference is a true and correct copy of the Complaint.

5. No other defendants have been named other than the City of Burbank, Burbank Police Department, and Officers Gunn, Baumgarten and Edwards.

6. A true and correct copy of this Notice of Removal is being filed this date with the clerk of the Superior Court of the State of California in and for the



1 County of Los Angeles and served this date upon the plaintiff as required by 28  
2 USC § 1446 (d).

3 WHEREFORE, the above-referenced action now pending in the Superior  
4 Court of the State of California in and for the County of Los Angeles, Case No.  
5 BC446016, is removed from the state court to this Court.

6 DATED: November 17, 2010

7 Respectfully submitted,

8 DENNIS A. BARLOW  
9 City Attorney

10 By: 

11 CAROL A. HUMISTON  
12 Sr. Assistant City Attorney  
13 Attorney for Defendant CITY OF  
14 BURBANK BURBANK POLICE  
15 DEPARTMENT, BURBANK  
16 POLICE OFFICERS ADAM  
17 BAUMGARTEN AND MICHAEL  
18 EDWARDS  
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**PROOF OF SERVICE**

F.R.C.P. 5 / C.C.P. 1013a(3) / Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), **Notice to Plaintiff and State Court of Removal of Action** by method indicated below, on the party in this action:

Manuel H. Miller  
Max. A. Sauler  
Law Offices of Manuel H. Miller, APC  
20750 Ventura Blvd., Suite 440  
Woodland Hills, CA 91364

Dennis M. Gonzales  
Lawrence Beach Allen & Choi, PC  
100 West Broadway, Suite 1200  
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

By placing ☐ the original / ☒ a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed as per the attached service list, for collection and mailings at the City of Burbank in Burbank, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

☐ **BY ELECTRONIC SERVICE  
(via electronic filing service provider)**

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at [www.fileandserve.lexisnexis.com](http://www.fileandserve.lexisnexis.com) pursuant to the Court's                      Order mandating electronic service. See CalR.C.L.R. 2053, 2055, 2060. The transmission was reported as complete and without error.

☐ **BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as per the above service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

☐ **BY ELECTRONIC SERVICE  
(to individual person)**

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

☐ **BY PERSONAL SERVICE**

☐ By personally delivering the document(s) listed above to the office(s) at the addressee(s) as shown on the attached service list.  
☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the office(s) at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

☐ **BY FACSIMILE**

By transmitting the document(s) listed above from City of Burbank-City Attorney's Office in Burbank, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

☒ **STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan  
Type or Print Name

  
Signature



**PROOF OF SERVICE**

F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), **Notice of Notice to Plaintiff and State Court of Removal** by method indicated below, on the party in this action:

Manuel H. Miller  
Max. A. Sauler  
Law Offices of Manuel H. Miller, APC  
20750 Ventura Blvd., Suite 440  
Woodland Hills, CA 91364

Dennis M. Gonzales  
Lawrence Beach Allen & Choi, PC  
100 West Broadway, Suite 1200  
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan  
Type or Print Name

  
Signature